(2026) 02 J&K CK 1635

In the Jammu And Kashmir High Court

Case No : Mac App No.2 Of 2024

Reliance General Insurance Co. Ltd	APPELLANT
Vs	
Rajni Devi	RESPONDENT

Date of Decision : 09-02-2026

Acts Referred:

Citation : (2026) 02 J&K CK 1635

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : Himani Uppal, S. Hakumat Singh

Final Decision : Allowed

Judgement

M A Chowdhary, J

1. On the strength of case set up in the appeal, the appellant-Insurer has prayed for setting aside the impugned award dated 02.11.2023 passed by the learned Motor Accidents Claims Tribunal, Jammu (for short 'the Tribunal'), in Claim Petition No.291/C, titled 'Rajni Devi. V. Reliance General Insurance Company Ltd. & Ors.', whereby respondent No.1-Rajni Devi hereinafter called as claimant was granted compensation to the tune of Rs.37,52,640/- for her disability in a motor accident.

2. The impugned award has been assailed on the following grounds:-

I. That the impugned award passed by the learned Tribunal below is against the law and facts of the case and the same is not sustainable in the eyes of law and as such deserves to be quashed and set aside;

II. That the impugned award dated 02.11.2023 is based merely on surmises and conjectures, without appreciating the documents which were filed by the parties and as such the same deserves to be

quashed and set aside;

III. That the learned Tribunal has not considered the law on the subject properly while passing the impugned award obviously for the reason that claimant had to establish that what her monthly income was. No income proof has been filed by the petitioner. In these circumstances, the income of the injured can very well be assessed on the basis of the chart available in the Minimum Wages Act in 2019;

IV. The Tribunal has not insisted on definite proof as regards the income of the injured and relied on mere statement of Respondent No.1;

V. It is furthermore contended that no proof of income of the claimant having been brought on record; the tribunal committed a serious error in holding that his income was Rs.12000/ per month;

VI. That the injured/Respondent No.1 suffered 85% disability of her right upper limb, the learned Tribunal has passed the award of Rs.37,52,640/- along with interest @ 7.5% P.A except the amount under the head 'Loss of Future Income' throughout till realization to respondents No.1, by holding the permanent disability 85% on whole body, which is incorrect and against the facts of the case, although it is evident that the Respondent No.1 suffered 85% disability of her right upper limb only and Doctor in his statement opined that 'She can perform day to day activities as the disability is with respect to the right upper limb only not with regard to the whole body. When compared to the whole body the disability decreases by 1/3 and comes to 28.03% of the whole body, which is permanent', but the learned Tribunal while passing the award has fallen in error and considering the permanent disability 85% with respect to the whole body and functional disability 100%;

VII. That the learned Tribunal has also not appreciated the evidence and cross examination of the witnesses. It is worthwhile to mention here that the petitioner is residing at Jammu and alleged to run her business at Dinanagar Punjab, which is not possible for a person who has mentioned that her occupation is that of a Tailor. Moreover the witnesses stated that the claimant/respondent No.1 was performing her job of tailoring from her home whereas the claimant in her own statement before the Tribunal has deposed that she was owned a Tailor Shop at Dinanagar, which are ambiguous statements of claimant and her witnesses;

VIII. That the claimant does not know the basis of tailoring, this fact is evident from the statement of the claimant and the learned Presiding Officer has not appreciated this fact and held that the claimant was a tailor by profession;

IX. That the learned Tribunal has also awarded Rs.1,00,000/- each for pain and suffering and for loss of amenities of life, which is at higher side;

X. That the learned Tribunal has also awarded Rs.1,50,000/- as cost of artificial limb, which is available free of cost at the Govt. Hospitals as stated by the expert witness Doctor; and

XI. That the learned Tribunal has exceeded its jurisdiction in passing the award impugned.'

3. Succinctly stated the facts of the case which led to the filing of this appeal are that on 17.04.2019, respondent No.1-Rajni Devi while standing by the side of parked scooty (PB06AQ/5761) at Kunjwani Chowk, Jammu was hit by the offending vehicle (JK05B-7161) driven in a rash manner, causing serious injuries to the respondent no.1, which resulted in loss of her right arm right from the shoulder; that the respondent no.1 had to be shifted to GMCH, Jammu, wherefrom, after initial treatment, she was taken to Amandeep Hospital Amritsar for further treatment, where she underwent two surgeries and suffered excruciating pain; that based on the aforesaid accident, a case came to be registered vide FIR No.33/2019 in Police Station Gangyal, Jammu and after investigation, challan was produced against driver of the offending vehicle U/Ss 279/337/338 RPC in the court of law, for judicial determination.

4. The respondent No.1-Rajni Devi (hereinafter called as 'claimant') filed a claim petition before the Tribunal, seeking compensation in terms of Motor Vehicle Act, for her disability, on various counts, pleading that she suffered disability as her right arm was amputated, resulting into loss of income; that she before her accident was in the job of Tailoring and Embroidery with monthly income of Rs.30,000/- to Rs.40,000/-.

5. The appellant/insurer filed its objections before the Tribunal and opposed the claim petition while respondents 2 and 3-registered owner and driver of the offending vehicle on their failure to respond to the notices, were proceeded ex parte vide order dated 12.10.2021; that the learned Tribunal vide its judgment dated 02.11.2023 directed the appellant-Insurance Company to pay Rs.37,52,600/- as compensation in favour of the claimant-Rajni Devi. Aggrieved of the award impugned, the appellant/insurer has filed the present appeal before this court on the grounds as indicated in para 2 of this Judgment.

6. Learned counsel for the appellant/insurer argued that the income of the claimant was accepted wrongly by the Tribunal below, as Rs.12,000/- per month from her work of tailoring. She has argued that the claimant, being a resident of Jammu, had met with an accident at Jammu had, however, shown that she had a tailoring shop at Dinanagar in Punjab; that the Tribunal has relied upon the improbable evidence produced by the claimant with regard to her income; that the husband of the claimant, a Carpenter, was shown having maximum monthly income of Rs.6000/-, whereas the claimant herself has claimed that she had monthly income of more than Rs.30,000/-, however, the Tribunal without any reliable evidence wrongly accepted the same as Rs.12,000/- notionally, and thus, the Tribunal has committed an error in computing and assessing the compensation awarded to the claimant. She, further, argued that though there was no reliable proof with regard to the avocation of the claimant with regard to tailoring, however, even if, it is assumed that she was having a profession of tailoring, her income, at the most, could have been taken and accepted as per the Minimum Wages Act, notified by the Government in the year when she had met with an accident.

7. She has also argued that the Tribunal has granted cost of artificial limb to the claimant in the amount of Rs.1,50,000/- without any evidence as the claimant has failed to produce any evidence so as to show as to how much is the cost of the artificial limb required by her. She drew the attention of this court towards the statement of the doctor examined by the claimant in support of her claim, who had stated that the artificial limb is available free of cost to the needy persons in govt. hospitals, as such, no amount of compensation should have been granted under the heading 'Cost of Artificial Limb'. She has, finally, argued that the compensation as awarded by the Tribunal be reviewed and re-assessed so that fair and just compensation is granted to the claimant, instead of exorbitant amount granted by the Tribunal.

8. The learned counsel for the respondent-Claimant, ex adverso, argued that the appellant has unnecessarily filed this appeal against the claimant, a poor lady, who was rendered disabled, as she had lost her right arm in the accident after receiving injuries in the accident, involving the offending vehicle insured with the appellant, her right arm had been amputated right from the shoulder, as such, she was incapacitated 100% in her functional capacity to work as a tailor or to do any of the household activities. He argued that the Tribunal had rightly accepted the income of the claimant as Rs.12000/- per month from the work of tailoring based on the evidence led by the claimant and, without there being any evidence in rebuttal, it cannot be stated that the claimant had income less than Rs.12000/- per month as accepted by the Tribunal. He further argued that Dr. Suhail Bashir, who had been examined with regard to injuries by the claimant had stated that the petitioner suffered 85% permanent disability, however, the Tribunal has taken the functional disability as 100%, in view of amputation of the right arm, incapacitating the claimant to perform the work of tailoring/ embroidery.

9. Heard learned counsel for both the sides, perused the record and considered the matter.

10. The notional income of the petitioner as a skilled worker was accepted at Rs.12000/- per month by the Tribunal. The income was added with 40 % following the principle laid down by the Apex Court in the case of Prannoy Sethi's case (AIR 2017 SC 5157) under the principle of future prospects. Having regard to the age of the claimant at the time of accident as 34 years, the multiplier of 16 was used to assess the loss of future income of the claimant, in view of principles laid down by the Apex Court in Sarla Verma's case (AIR 2009 SC 3104), besides granting compensation on account of 'pain and suffering', 'loss of amenities of life', 'cost of artificial limb' and 'medical expenses. As such, the total compensation was granted to the tune of Rs.37,52,600/- along with interest @ 7.5 per cent per annum.

11. The respondent-Rajni Devi in her statement had claimed that as she was doing the job of tailoring and embroidery at Dinanagar, Punjab and she was having monthly income of Rs.30,000/- pm to Rs.40,000/- and that because of

losing her right arm from the level of shoulder due to the accident, she had lost her 100% earning capacity. The other witnesses examined by her had also supported her on these aspects.

12. The Tribunal below had accepted the monthly income of the claimant at Rs.12,000/- per month based on Minimum Wages Act. The learned counsel for the parties on persistent asking could not produce any notification of the Labour and Employment Department of Govt. of Jammu & Kashmir, with regard to minimum wages. This Court has, however, found a notification (SRO 460) dated 26.10.2017 whereby the daily minimum wages for semi-skilled workers had been fixed by the Government at Rs. 350/- per day. In the considered opinion of this court, income was to be assessed at the minimum wages notified by the Government, when there is no conclusive proof with regard to the income of the claimant.

13. In the present case, the claimant except making bald statement with regard to her income ranging from Rs.30,000/- to Rs.35,000/-, had not produced any document in support of her claim as at least she could have shown her bank pass book to substantiate her claim. In absence of any definite and conclusive proof with regard to income, it was incumbent upon the Tribunal below to accept the minimum wages notified by the Government. The income is thus, accepted of the claimant as per the Minimum Wages notified as Rs.350/- per day for a semi-skilled worker. Having accepted the monthly income of the claimant as Rs.10,500/- per month, the loss of future income of the claimant is required to be computed afresh, besides maintaining the amount of compensation granted under the other heads as it is, there being no illegality.

14. The next contention of the learned counsel for the appellant that the amount of Rs.1,50,000/- granted under the head of 'cost of artificial limb' should not have been granted as such an artificial limb is provided to the victims free of cost in Govt. hospitals as had been stated by the doctor examined by the claimant herself before the court below. This contention of the learned counsel is not worth consideration for the simple reason that it is for the victim to decide as to wherefrom and what kind of medical aid she or he has to receive and the victim cannot be made to approach the govt. hospital only as he/she may require the best services if may be available in the private sector. On a rough estimate, an amount of Rs.1,50,000/- by no stretch of imagination, can be stated to be on higher side as granted by the Tribunal below under the head of 'cost of artificial limb. The contention, on this count, of the learned counsel for the appellant is, thus, rejected.

15. The claimant as per evidence led by her and there being no rebuttal, had a shop of tailoring and embroidery, as such, with amputation of her right arm from shoulder, it can be safely held that she suffered 100% loss of income, having been permanently disabled. By applying the principles laid down by Hon'ble Supreme Court in Sarla Verma's case and also Pranay Sethi's case, the multiplier of 16 and an addition of 40% to the income of the self employed person of the

age group of the claimant is applied as such, the loss of future income of the petitioner is required to be computed afresh. Monthly income of Rs.10,500/- with addition of its 40%, comes to (10,500+4200) Rs.14,700/- and annually as (14,700 x 12) Rs.1,76,400/-. Having regard to the age of the claimant, multiplier of 16 is required to be applied to work out future loss of income, with 100% functional disability. With application of 16 as Multiplier, the total loss of future income comes to (176400 x 16) Rs.28,22,400/-. There is no illegality in grant of compensation under the other heads, which are maintained.

16. Having regard to the discussion made hereinabove and aforestated reasons, the impugned award is ordered to be modified as under:

HEADS

GRANTED

MODIFIED

Loss of future income

Rs.32,52,640/-

Rs. 28,22,400/-

For pain and suffering

Rs.

1,00,000/-

Rs.

1,00,000/-

Loss of amenities of life

Rs.

1,00,000/-

Rs.

1,00,000/-

Cost of artificial limb

Rs.

1,50,000/-

Rs.

1,50,000/-

Medical expenses

Rs.

1,77,040/-

Rs.

1,77,040/-

TOTAL

RS.37,52,600/-

Rs. 33,49,440/-

With the above modification in the impugned order, the same shall be enforced with the interest granted therein, in terms of the impugned award. The awarded amount, if deposited in this court, is ordered to be paid to the claimant and the excess, if any, shall be refunded to the appellant under rules.

17. The appeal is partly allowed and the impugned award is modified as above.

18. Trial court record, along with copy of this judgment be sent back.